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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the

FEDERAL, COMMUNICATIONS COMMISSION
Washington, D C 20554

In the Matter of	)	
	)	
lntcmational Settlements Policy Reform	)	IB Docket No. 02-324
lntcmational Settlement Rates	)	IB Docket No 96-261

COMMENTS OF PCCW LIMITED

PCCW Limited ("PCCW") submits these comments in response to the Commission's *Notice of Proposed Rulemaking* (FCC 02-285) *["Notice"]* released in the above-captioned rulemaking proceedings on October 11, 2002. In these comments, PCCW focuses on the issue of excessive mobile termination rates in numerous countries.

PCCW is a global provider of integrated communications services, including local telephony and broadband services. In Hong Kong, PCCW provides a full suite of local and international wireline services. As a provider of international direct dial ("IDD") services to Hong Kong consumers, PCCW operates as a retail carrier and obtains the necessary underlying wholesale services and facilities from Reach Ltd, a joint venture that is owned by PCCW and Telstra Corporation Limited on a 50/50 basis. There are a large number of IDD competitors in the Hong Kong market, and PCCW is classified as a non-dominant carrier in its provision of retail IDD and intcmational bandwidth services in Hong Kong.

Although PCCW does *not* operate a mobile network in Hong Kong, the Hong Koiig mobile market is intensely competitive with six separate facilities-based mobile competitors as well as a small number of MVNOs. Hong Kong does not suffer from the problem of excessive mobile termination ratcs, as mobile carriers almost exclusively recover their tcrmination costs through airtime charges paid by the callcd party. There are modest charges for wireline termination in Hong Kong (less than $.02/minute US) due to the imposition of certain universal service and local access charges. Mobile termination charges in Hong Kong are subject to commercial negotiation and arc much less than wireline termination charges. Hence, Hong Kong may be onc of thc few markets in the world where wireless termination is less costly than cquivalcnt wireline termination.

PCCW submits that mobile termination rates at levels far in excess ofunderlying costs is a serious global problem that substantially harms users of IDD services, including those in both the U.S. and Hong Kong. As the Commission notes in the *Notice*, there are numerous countries where mobile network operators charge termination rates that are far higher than any possible underlying termination costs. Although this problem may be aggravated in countries that apply a "calling party pays" regime, as the *Notice* suggests, it is PCCW's experience that this problem can and does exist in "both parties pay" regimes as well. Hence, PCCW believes that portraying cxccssive mobile tcrmination rates as a product of the "calling party pays" regime may tend to oversimplify the nature and scope of the problem worldwide. The key objective should be to rationalize the interconnection regimes for traffic being terminated on fixed and mobile networks to eliminate non-cost based rate distortions.

Thc trend toward high mobile termination rates has arisen during the same time period that tcrmination rates for other international traffic have decreased dramatically towards more cost-based lcvcls. There arc a number of reasons for this decline. Certainly, there is a pronounced movement towards liberalization in the telecommunications sectors of many countries, particularly following on the heels of the WTO Basic Telecommunications Agreement in 1997. The resulting entry of new carriers and increased competition in many countries have played a significant role in pushing termination rates lower towards cost-based levels. Similarly, the massive expansion of global capacity (both satellite and undersea), as well as the increased efficiency of international simple resale ("ISR"), refile, and other bypass routing mechanisms, have undercut the ability of most international carriers to maintain above-cost termination rates. In addition. national regulators have applied pressure on domestic wireline carriers to reduce termination rates to lower levels, and this in turn has resulted in lower termination costs for international calls. This Commission has assisted in this process through its ***Benchmark** Order*, 12 FCC Rcd 19806 (1997), which has successfully resulted in significant settlement rate reductions for U.S. international carriers on nearly all routes. Similarly, by liberalizing the routing of switched international minutes outside the settlements process through ISR arrangements, the Commission has helped bring international wireline termination rates to the current levels. Hence, the rise of high mobile termination rates in a number of countries goes directly against relevant industry cost and pricing trends.

It is not difficult to see who pays the price for above-cost mobile termination rates. Users in countries that do not have these excessive charges, such as the U.S. and Hong Kong, are effectively subsidizing mobile operators in other countries who successfully extract excessive termination charges. Of course, ultimately these subsidies are reflected in higher retail rates or surcharges imposed on end-user customers in the U.S., Hong Kong and other originating countries. The harm to consumers through higher retail rates is compounded by the fact that many callers do not realize they will have to pay a higher rate or surcharge for calling a foreign mobile user, or indeed that they are even placing a call to a foreign mobile network. The result is that consumers arc surprised, and unfairly so, when they receive their bills. To the extent that an international carrier averages its call termination rates, customers making calls terminating on wireline networks end up subsidizing customers calling mobile networks, which is an equally inappropriate result.

Moreover, as subscribers increasingly become aware of these high rates and surcharges, the result could be a reduction in the growth of outbound international traffic. Many callers will he more reluctant to place international calls if they have been subjected to unexpectedly high rates or surcharges, or if they suspect that they may be subject to such charges. Equally troubling, to the extent subscribers cannot easily distinguish between foreign telephone numbers that terminate on tixed versus mobile networks, demand for all international switched telephony, not just outbound calls to foreign mobile networks, could be adversely affected. Excessive mobile termination rates discourage investment and deter growth in the international telephony market at precisely the time when such investment and growth are needed to help bring the industry through the current period of volatility.

In addition, PCCW believes that excessive mobile termination rates around the globe have contributed to a steady erosion of service quality for calls terminating on wireless networks. Absent surcharges on retail customers and the transfer of surcharge payments from the originating to the terminating international carrier, a clear disincentive exists for carriers to handle international calls to mobile numbers. For example, an international traffic termination agreement may place limits on the amount of mobile-terminating traffic which the receiving international carrier will accept, which results in substantial volumes of overflow mobile-terminating traffic being routed through alternative mechanisms, including refile and third-country routing. However, the contractual grid that underlies the global routing of wireline and wireless calls does not always ensure that carriers receive sufficient payment to cover mobile termination costs in the destination market. As a result, mobile-terminating international calls may be subject to blocking when carriers cannot find a compensatory way to terminate the calls, thereby depressing call completion ratios. Further, call set-up times can be lengthier for calls terminating on foreign wireless versus wireline networks for the same reason. PCCW submits that this deterioration in service quality is directly related to the abusive termination pricing practices of mobile operators in many countries

The Commission already has policies in place that effectively prohibit the most excessive foreign mobile termination rates, In its ***Benchmark Order,*** 12 FCC Rcd 19806 (1997), the Commission prohibited U.S. international carriers from paying settlement rates for international switched telephone traffic above a specified ceiling or "benchmark." The benchmarks are $.23/minute for low-income countries, $.19/minute for middle-income countries, and $.15/minute for high-income countries. The Commission has made clear that the benchmark rate applies to "all traffic" on every route. *E.g., Petition for* ***Enforcement of International Settlements Benchmark Rates for*** *Service with Qatar*, 16 FCC Rcd 16203, 16203 (2001) (Order) (Chief, International Bureau). Hence, it is a direct violation of this policy when a foreign mobile carrier imposes termination rates that, standing alone, are higher than the applicable benchmark. It also violates this policy when the per-minute combination of the termination charge (whether a settlement or ISR rate) and the mobile termination charge exceeds the applicable benchmark.[1] It is particularly timely that the Commission address this issue now given that (i) the growth of mobile subscribers enormously exceeds the growth in fixed lines; (ii) mobile minutes constitute an increasing percentage of international minutes, (iii) in some countries the absolute number of

[1] Also, on routes where the FCC's International Settlements Policy applies, excessive foreign mobile termination rates effectively establish asymmetrical settlement rates in violation of the FCC's requirement of a 50/50 split of the accounting rate.

mobile subscribers already exceeds the number of fixed line customers; and (iv) the number of routes that fall in violation of the benchmark policy will only increase in the years ahead if mobile termination rates do not start coming down.

Despite the gravity of this problem, PCCW recommends that the FCC move cautiously when enforcing the benchmark policy because (i) unilateral enforcement actions may not be appropriate and could have unintended side-effects; and (ii) foreign governments and regulators should be given the opportunity to reform this sector. *First,* the FCC's past actions to enforce its benchmark policy have been to direct U.S. international carriers to withhold above-benchmark payments from the foreign correspondent telecommunications carrier who refused to accept benchmark rates. *E.g., Petition for Enforcement of International Settlements Benchmark Rates for Service With Kuwait*, 14 FCC Rcd 8868 (1999) (Chief, Telecommunications Division, International Bureau). However, the current situation is different, as the foreign mobile operator is often a different entity from, and in many cases unaffiliated with, the international carrier who receives the traffic from the originating U.S. carrier. Aggressive implementation of the benchmark policy would put that international carrier in an untenable position, as it would face losses from the carriage of mobile-terminating traffic if it could not convince the mobile operator to lower its termination rates. The result could well bc the discontinuation of mobile-terminating traffic on the route. In PCCW's view, this is too high of a price to pay for the modest pressure the FCC's enforcement action would create at the foreign end for more cost-based termination rates.

Of course, where the mobile carrier is directly affiliated with the international carrier, this concern would be reduced. Thus, the Commission should in the first instance limit any possible direct enforcement actions to routes where the foreign correspondent carrier and the mobile operator are the same entity or are commonly owned. This would ensure that the entity faced with a shortfall of termination revenues is the same entity that has the power to effect a reduction in mobile termination rates.

Second, foreign governments and regulators are in a position to exert a significant influence over mobile interconnection rates in their countries. In fact, high mobile termination rates may have been approved or required by the foreign government or regulator. Accordingly, PCCW would suggest that the starting point for the Commission should be to work with foreign govemmcnts and regulators to bring about positive change through the normal procedures and channels in the foreign countries.

Further, high mobile termination rates typically are a problem for domestic traffic as well as international calls, and intense pressure is now mounting in many countries for lower termination rates. Any actions by forcign governments or regulators to lower mobile termination rates inevitably will benefit callers from other countries who desire to place calls to that country's mobile networks. (There is no feasible way for foreign mobile operators to justify or insist upon a higher termination rate solely for international inbound traffic, as originating carriers, if necessary, could find ways to re-originate traffic as "domestic" in the foreign country.) Hence, foreign government or regulatory actions lowering mobile termination rates should directly inure to the benefit of U.S. carriers that originate mobile-terminating traffic.

Several countries have acted to force mobile termination rates lower, and other countries can be expected to follow. In the United Kingdom, it is being reported that the Competition Commission has completed a report calling for aggressive reductions in mobile interconnection rates. **See** R. Budden "Move to Cut Cost of Calls Between Rival Mobile Networks," Financial Times, January 0,2003 (London Edition 2). Favorable action by OFTEL lo implement this recommendation can be expected later this year. Australia, France and other countries have taken, or are now considering, similar actions.[2] Because these government actions hold promise for reforming mobile termination rates in many countries, and because unilateral enforcement of the benchmarks policy could he perceived as interfering with such cfforts, PCCW recommends that the Commission strive to work closely with the regulators and other officials in foreign countries to reform this sector before resorting to benchmark enforcement actions.'

Respectfully submitted:

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2 **See.** *e.g.*, Australian Competition and Consumer Commission, "Pricing Methodology for the GSM and CDMA Termination Services – Final Report, September 2002," *available at* www.accc.gov.au/telco/access/meth_gsm_cdma.PDF (stating that in arbitrating disputes for termination services the ACC will use the retail benchmarking approach to assess appropriate levels of pricing); "Decrease of the price of fixed to mobile calls," Press Releasc, Autorite de regulation des teleconimunications (ART), Nov. 6, 2002 (reporting that ART has required a 15% reduction in mobile termination rates by Jan. 1, 2003 and a **40%** total reduction over three years).

3 To the extent that these surcharges may be defended by reference to high 3G license and/or auction fees, PCCW rejects such fees as a legitimate basis for high termination rates or surcharges on international inbound calls.

CERTIFICATE OF SERVICE

I hereby certify that copies of PCCW Limited's Comments were served this 14th day of January, 2003, by hand on the following:

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